

**IN THE HIGH COURT FOR ZAMBIA  
AT THE COMMERCIAL REGISTRY  
HOLDEN AT LUSAKA**

*(Commercial Jurisdiction)*

2019/HPC/0502



**BETWEEN:**

**FELIMART INVESTMENTS LTD**

**PLAINTIFF**

**AND**

**RHINO BICYCLES LIMITED**

**1<sup>ST</sup> DEFENDANT**

**SIMMY HAMATENDE**

**2<sup>ND</sup> DEFENDANT**

**Before Mr. Justice Bonaventure C. Mbewe in Chambers on  
the 15<sup>th</sup> day of January, 2020.**

*For the Plaintiff* : *Ms. M. Kapapula of Messrs.  
SLM Legal Practitioners*

*For the 1<sup>st</sup> & 2<sup>nd</sup> Defendant* : *Mr. C. C. Chilekwa of  
Messrs. CC Gabriel & Co*

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**J U D G M E N T**

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**Cases referred to:**

- 1. Jamas Milling Company Limited v. Imex International limited  
(2002) ZLR 79*
- 2. China Henan International Economic Technical Cooperation v.  
Mwange Contractors (2002) ZR 28/SCZ/8/235/2001*

3. *Chazya Silwamba V. Lamba Simpito (2010) ZR Vol. 1 at page 475*

**Legislation referred to:**

1. *Order 53, Rule 6 (2) – (5) of the High Court (Amendment) Rules, 2012*

This matter came up for a Scheduling Conference before me and upon examining the Pleadings filed, especially the Defence, I formed the opinion that the said defence was contradictory in some parts and contained admissions which made it breach **Order 53, Rule 6 (2) – (5) of the High Court Rules, Chapter 27 of the Laws of Zambia** as follows;

The Defendant contradicts itself in Paragraphs 3 and 4 when it states in Paragraph 3 that it denies that the Plaintiff was to stand as surety for tax purposes or at all, whereas in Paragraph 4 the Defendant avers that the only terms of engagement communicated to it was a US\$300 RIB charge. The Plaintiff's Amended Statement of claim states at Paragraphs 4, 6 and 9 that the Plaintiff was to stand as surety for Zambia Revenue Authority (ZRA) taxes using its bond facility to move the defendant's shipment from Nakonde to Lusaka into the Plaintiff's Bonded Warehouse and on 14<sup>th</sup> March, 2019 the ZRA issued a release order for movement of the consignment and the Plaintiff claims a Removal in bond penalty charge of K6,000.00 and Removal in bond charge ex-Nakonde of K4,585.00.

The Defendant cannot in one breath deny engaging the Plaintiff to act as surety to ZRA and in the next breath admit that the terms of engagement communicated were for a RIB charged at \$300 as the Removal in Bond (RIB) is the means by which the Plaintiff stood as surety for the release of the consignment by ZRA from Nakonde to be transported to Lusaka leading to the claim for the RIB penalty by ZRA and plaintiff's charge. The Defendant, by the cited paragraphs of its Defence contradicted itself and either demonstrated a lack of knowledge of the process that it was contracting the Plaintiff to undertake on its behalf with ZRA or is not telling the truth.

In Paragraph 5 the Defendant denies that it was a term of the contract between the parties that final clearance was to be finalized at Lusaka. The Defendant has not averred where it contracted final clearance to take place under the RIB and has therefore not traversed the Plaintiff's assertion in Paragraph 5 of the Amended Statement of claim.

The contents of Paragraphs 7 and 8 of the Defendant's Defence are hard to believe, that the details of the RIB or release order by ZRA were not brought to the Defendant's attention as its transporter required these documents to move the consignment from Nakonde to the Plaintiff's warehouse in Lusaka. The Defendant has not averred what documentation it or its transporter was given to release of goods to the Defendant's warehouse to effectively traverse the 2 paragraphs.

In Paragraph 4, 5, 6 and 9, the Defendant admits that there was a contract between the parties and it requested to be invoiced and that it owes taxes to Zambia Revenue Authority. These admissions cannot be ignored.

In the case of **Jamas Milling Company Limited V. Imex International Limited (1)** the Supreme Court spelt out the purpose for which the Commercial Division was established as a fast track court and the spirit in which the court was established not to allow dilatory conduct and delay of proceedings.

Further, the Supreme Court in the case of **China Henan International Economic Technical Cooperation V. Mwange Contractors (1)** held *inter alia* that;

*“Judgment on admission can in appropriate cases be entered at the scheduling conference because this is the time the Court considers, the pleadings and directions the matter should take.”*

In the same case, it further held that;

*“In the new dispensation in commercial matters require parties to plead their cases with precision and in detail early in the litigation in order to assist the courts in narrowing and defining*

*the issues in contention.... Where a defence in a commercial matter does not satisfy the requirements of Rule 2, the Court is entitled to enter Judgment on Admission in an appropriate case.”*

The laws in the Commercial Court on Judgment on Admission is contained in **Order 53, Rule 6 (2) – (5) of High Court Rules, Chapter 27 of the Laws of Zambia** which reads;

*(2)The defence shall specifically traverse every allegation of fact made in the statement of claim or counter-claim, as the case may be.*

*(3)A general or bare denial of allegations of fact or a general statement of non-admission of the allegations of fact shall not be a traverse thereof.*

*(4)A defence that fails to meet the requirements of this rule shall be deemed to have admitted the allegations not specifically traversed.*

*(5)Where a defence fails under sub-rule (4), the plaintiff or defendant, or the court on its own motion, may in an appropriate case, enter judgment on admission.”*

In the case of **Chazyia Silwamba V. Lamba Simpito (3)** the Court had the following to say on the matter of judgment on admission;

1. *“A party may admit the truth of the whole or any part of another’s case. When a fact is admitted, it is unnecessary for a party to advance evidence in relation to the admitted fact(s) at trial.*
2. *When a fact is admitted, it ceases to be an issue and neither is required or permitted to advance evidence about it at trial.*
3. ***An admission may be made expressly in a defence or in a defence to counterclaim.***
4. ***An admission may also arise by virtue of the rules. For instance, where a defendant fails to traverse an allegation of fact in an Amended Statement of claim or where there is a default of defence.***
5. ***If a defendant fails to address an allegation he is deemed to admit it.***
6. *The function of an admission is to ensure that the Court’s time at trial is not wasted and delay is avoided. Admissions also narrow the issues to be decided.*
7. ***A defence must not be evasive. A defence must answer all allegations at the level of detail of the underlying allegation.***
8. ***Every allegation must be admitted frankly or denied boldly; any half admission or half denial is deemed to be evasive.”***

I therefore, find that upon a total consideration of the Defendant’s Defence filed herein, this is a fit and proper case for this Court to embrace the spirit of the China Henan and Jamas cases by


entering judgment on admission for the Plaintiff, because the defence filed has not adequately traversed the assertions in the Plaintiff's Amended Statement of Claim and raises no triable issues and there is no issue that should proceed to trial.

I therefore enter Judgment on admission in favour of the Plaintiff. The Plaintiff is given 4 weeks from the date of this Judgment to quantify the final amounts due from the Defendant to itself and the Zambia Revenue Authority.

I Order the Defendant to pay interest on the said judgment amount at the short term bank deposit rate from the date of the writ of summons to the date of judgment, and thereafter at the current Bank of Zambia short term rate until date of final payment.

I award costs of and incidental to these proceedings to the Plaintiff, to be taxed, in default of agreement.

**Delivered under my hand at Lusaka this 17<sup>st</sup> day of January 2020**

  
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**Bonaventure C. Mbewe**  
**HIGH COURT JUDGE**